

OHIO CONSTITUTIONAL REVISION — WHAT OF LOCAL GOVERNMENT?

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These are difficult times in which to pursue state constitutional revision. This is not to speak discouragingly of the enterprise. It is, rather, to be realistic about the psychic, social, economic and political complexities of life at this stage in the course of human affairs. I need only to suggest that one reflect upon the extraordinary changes in community life and in the human condition generally since the Ohio Constitutional Convention of 1912 and bear in mind that state constitutions have not been political documents written for the ages.

Our task is to discuss Ohio constitutional revision in relation to local government. The facts of life tell us to pursue the matter in larger than state context. We must be conscious of all major levels of community from the world community to the tiny village. Such is the interdependence of the members of the *genus homo*.

While one does not see local government in direct relationship with the world community or an international regional community, there are pervasive problems that should be of common concern, notably restoration of a sound system of relationship of man to the natural order and the achievement of a system of social order free of the overhang of nuclear armament. We have a national government with responsibility in external as well as internal affairs with respect to such matters. What it does as to them plainly conditions what state and local units may do in their spheres.

On the domestic scene the national government stands astride a national economy with unique capacity both to influence economic life and to draw upon the private sector for communal purposes. What may be beyond its broad power of direct action may yet be influenced very strongly by the leverage of federal funds. So much is this the case that generally the mass media and many people simply assume and commonly refer to local units as acting under federal aid programs with authority drawn from the national government itself, when actually the national government is only making donations or grants subject to conditions attached to those grants.

The lesson in all this for me is not that state and local governments are headed for limbo. I do not believe for a moment that they are. The country is so large, so complex and so diverse that some decentralization in decision making and administration is indispensable. Moreover, local autonomy is a political value that is far from dead. As with so many of the problems which vex us, there are roles for all levels of government.

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The lesson for those concerned with state constitutional revision is that the states should strive to maintain the greatest flexibility of action. They should direct constitutional change to strengthening basic state and local governmental institutions and processes, with stress upon responsible action rather than upon limitation of authority. Additionally, I stress that, according to my best lights, this is the fundamental undertaking with which the state constitutional revision commission is charged.

I. REPRESENTATIVE GOVERNMENT

Local government should be viewed in relationship to the basic state policymaking body, the legislature. I do not have the legislature of Ohio particularly in mind when I say that our political system has defaulted with respect to the provision of a strong, representative body at the state level. That institution is the key organ both in general policymaking and in the distribution, within the constitutional framework, of responsibility and authority for decision making and execution. This bears pervasively upon local government, viewed in the large, even in a home rule jurisdiction. Thus, I go afield to say that a central concern of a state constitutional convention, or whatever method you use to achieve change, is to go as far as possible in strengthening representative government. We cannot do it by polling the citizenry, however clearly we recognize that the problems and the decisions are of primary concern to them. I put it this way because legislatures as institutions unhappily occupy a low place in the public's esteem, a long-existent condition which does not encourage reform efforts.

The voters of Ohio have already responded to the Supreme Court's one-man one-vote principle by establishing through constitutional amendment a fixed membership for both houses of the legislature with a single-member district pattern of 99 house seats, upon which is superimposed 33 single-member senatorial districts, each covering three contiguous house districts.¹ The design is to avoid crossing county lines in defining house districts where the population ratio for such districts is less than county population, thus taking into consideration local governmental institutions and concerns.

Does this have any special significance for local government? In general, one-man one-vote has afforded more representation from the suburbs. They are the areas of major population growth, but I am afraid that this does not provide assurance of greater legislative sensitivity to central city problems or problems of regional perspective. The explanation for this is found in human nature. There are great differences in human orientations, interests and outlooks. Many people live in the sub-

¹ OHIO CONST. art. XI, §§ 2, 11 (1967).

urbs, in part at least, to achieve insulation from the urgent and perplexing problems of the central city.

Should the state constitution speak expressly on the subject of representation on local governing bodies? The Supreme Court has applied one-man one-vote to general function local units like counties and cities, towns and villages,² and even to an elective junior college district, the board of which had taxing and borrowing power.³ This last ruling is rather extraordinary because it did not involve a body of general legislative competence or responsibility. It is my notion that it would be just as well to have the constitution remain silent on the matter. The subject is still undergoing development in Supreme Court adjudication and there are related matters, such as the impact of multi-member districts upon racial and political groups, which are yet in a somewhat unsettled state, despite the recent rejection in 1971 by the high Court of an attack upon multi-member legislative districts in the neighboring states of Indiana⁴ and New York.⁵

II. POPULAR LEGISLATION

In 1912 an Ohio constitutional amendment made general provision for the initiative and referendum in municipalities, but left it to the legislature to implement the general scheme by providing the appropriate procedure.⁶ The legislature borrowed from the constitutionally articulated state-level scheme and ordained that an ordinance adopted expressly as an emergency measure would not be subject to referendum. Since the Ohio courts do not review the finding of emergency—in other words, they take the declaration of emergency by the local governing body as final—the local governing body has been left in the saddle so far as the referendum is concerned.⁷ The significance of this from the standpoint of the relative dignity of action by the legislative body must be obvious. The voters, who might be described as the sovereign in the local unit, do not really have the ultimate voice by referendum. They may, however, through the initiative, repeal an emergency ordinance.⁸

It is to be observed that the legislative hand in this matter has not made the ultimate disposition of it. The Supreme Court of Ohio has held that home rule power does extend to this subject, so a charter municipality may regulate the relationship of councilmanic action to voter action

² *Avery v. Midland County*, 390 U.S. 474 (1968).

³ *Hadley v. Junior College District*, 397 U.S. 50 (1970).

⁴ *Whitcomb v. Chavis*, 403 U.S. 124 (1971) (State legislature).

⁵ *Abate v. Mundt*, 403 U.S. 182 (1971) (county governing body).

⁶ OHIO CONST. art. II, § 1f.

⁷ State *ex rel.* *Fostoria v. King*, 154 Ohio St. 213, 94 N.E.2d 697 (1950).

⁸ State *ex rel.* *Sharpe v. Hitt*, 155 Ohio St. 529, 99 N.E.2d 659 (1951).

in a way to outlaw the emergency clause device and give popular legislation higher dignity than councilmanic action.⁹

It seems to me that there is no evident need for express constitutional provision for popular legislation in municipalities, at least so long as voter participation in policymaking can be provided for in a home rule charter. In that framework, popular lawmaking is optional with the local community.

There is the basic question of whether popular lawmaking should even be available at the local level. I have no serious doubt that it should. I say this with awareness of recent experience supporting the view that the voters are likely to be less receptive to proposals, like fair housing measures designed to promote equality of opportunity without regard to group characteristics, than are elected representatives.¹⁰ The latter are not always warmly committed to human rights but they are conscious of the political force of minority groups. This state of affairs is troubling but the ultimate test of a just society, in any event, is whether the people at large support equality before the law and equality of opportunity. We must bear in mind, moreover, that there are judicial restraints upon all law-makers in our system.

Whether tax and appropriation measures for regular governmental operations should be subjects of popular legislation is definitely another matter. I am quite clearly of the opinion that they should not. To leave appropriations and tax measures, which are necessary for essential public services and the stable and orderly conduct of local affairs, to action by the voters would not afford assurance that the needs of the given community would be served.

III. HOME RULE

I do not wish to "upstage" the discussion of the subject of home rule which is to follow. I shall not dwell on it, but I would not do justice to my assignment were I not to take it into account in a general overview of the problems of local government from a constitutional perspective in Ohio.

I had occasion some years ago, when I was in Ohio, to do some research in this area. In the process I researched the records of the Constitutional Convention of 1912. I found them a very interesting study.¹¹ It should be noted that back in 1912, the delegates—at least some of them—at the

⁹ State *ex rel.* Daniels v. Portsmouth, 136 Ohio St. 15, 22 N.E.2d 913 (1939).

¹⁰ Hunter v. Erickson, 393 U.S. 285 (1969) (mandatory referendum under home rule charter on fair housing ordinance invalidated under equal protection clause). In 1971 the Court upheld a California constitutional requirement of a local referendum on a low rent housing project. James v. Valtierra, 402 U.S. 137 (1971). The immediate point is that reliance on the referendum device discloses an underlying attitude as to civil rights measures.

¹¹ Fordham and Asher, *Home Rule Powers in Theory and Practice*, 9 OHIO ST. L.J. 18 (1948).

State Constitutional Convention were quite aware that the traditional home rule concept of a grant of home rule power which was rested upon a distinction between municipal affairs, as to which home rule obtained, and state concerns, where legislative superiority and primacy controlled, was rationally and pragmatically vulnerable. They questioned it, and I agree with them. It is a queasy and shifting business.¹² Governmental functions are not inherently either state or local in nature. What might be held to be local at one stage of the game might, a few years later, be judicially regarded, because of change in societal conditions, as of such a general character as to be identified as a state concern.¹³ So the delegates at the convention tried to do something about this. They eschewed the example of California and other states which had embraced the old formulation, the old dichotomy. Unhappily, what they did, I think, was not essentially different. The Ohio provision, § 3 of article XVIII of the state constitution, confers upon municipalities all powers of local self-government. I am afraid that phrase does not really move us very far. It still demands a determination as to whether a particular matter is local or state. I think this is amply demonstrated by experience in the case law in this state since 1912.¹⁴

It is very interesting that among the delegates at the convention in 1912 was a member of the history faculty of the Ohio State University, Professor George W. Knight, who articulated a home rule theory which in much more recent years has had large influence. The idea was one which urban leaders in the state were pressing at the time. He said so at the convention.

Professor Knight believed that the constitutional grant of home rule should not be like that in California. He espoused a broad grant to municipalities, that were to have home rule status, of all powers that the legislature might, within its plenary competence, confer upon local government, always subject to the paramount authority of the legislature to impose by general statute such limitations, exceptions or exclusions as it should find desirable in the general interest. In other words, a home rule charter municipality would have a broad sweep of authority except as might be limited by its charter or by general legislation. This dispensation would generally eliminate the necessity of running to the legislature now and again for enabling legislation as to this or that. It would, moreover, impose political accountability upon the legislature for any limitations it might impose.

¹² One recalls the strong language of Judge McFarland as early as 1903. He spoke in frustration of those indescribable wild words "municipal affairs." *Ex parte Braun*, 141 Cal. 204, 213, 214, 74 P. 780, 784 (1903).

¹³ *Winters v. Bisailon*, 152 Or. 578, 54 P.2d 1169 (1936) (regulation of speed of motor vehicles).

¹⁴ Note particularly the case of *State ex rel. Canada v. Phillips*, 168 Ohio St. 191, 151 N.E.2d 722 (1958).

This conception, it seemed to me, involved a very sound and flexible approach, and I articulated it in a draft of Model Constitutional Provisions for Municipal Home Rule in 1953.¹⁵ The "Model" was published by the American Municipal Association, now known as the National League of Cities.

Perhaps it is not inappropriate to note that in a number of states the constitutions now embrace this approach. In October 1971, the State of Missouri, which was the first state to embrace home rule, adopted a constitutional amendment which puts aside the old dichotomy and embraces the Knight concept.¹⁶

Fairly early in the game, the 1912 Ohio grant of substantive powers was interpreted to extend directly to all municipalities and, thus, did not depend upon the adoption of a home rule charter.¹⁷ This is a very important distinction. A city or village did not have to adopt a charter to have all powers of local self-government. So the principal advantage in adopting a charter was not to have an instrument which granted powers; the principal advantage was the freedom afforded to set up a framework of government. It was indeed significant from that standpoint. And there was a further advantage. A city or village could disavow powers; it could exclude powers by express provision in a home rule charter. Under this concept you certainly did not have to look to a charter as a source of authority. The enablement was taken care of by the direct grant in the constitution.

It is interesting, however, that of the hundreds of villages in the state—units of less than five thousand—very few have drafted and adopted home rule charters. A great many of them pay little attention to home rule; they simply operate under the general statutes. This was the case twenty years ago and I would be surprised to find that not still so.

I doubt that anybody who is generally disposed in favor of home rule would like the idea of taking home rule power outright away from the villages, so that one way to handle this would be to change the constitutional scheme and say, as the Model Constitutional Provisions do,¹⁸ that the local unit, whether small or large, would have substantive home rule powers only if it adopted a charter. If it adopted a home rule charter of government, it would have the plenary grant of home rule power. This is significant for units, large and small, because it draws a clear line between those with home rule status and those which operate under general law.

Here let us return briefly to one-man one-vote. I know of no judicial decision to guide us, but I find it clear enough in principle that one-man

¹⁵ This was a pamphlet publication which may be cited as FORDHAM, MODEL CONSTITUTIONAL PROVISIONS FOR MUNICIPAL HOME RULE (American Municipal Association, 1953).

¹⁶ MO. CONST. art. VI, §§ 19, 19a.

¹⁷ *Perrysburg v. Ridgway*, 108 Ohio St. 245, 140 N.E. 595 (1923).

¹⁸ Fordham, *supra* note 15, § 6.

one-vote applies to the election of a home rule charter commission. Such an election relates to the very organization of local government. A home rule charter is the organic law of the community.

IV. REGIONAL PROBLEMS

The terribly difficult and vexing matter of regional problems is something to which we could devote weeks. The most I am able to do now is to touch on it and to try not to leave it completely in shadow.

The first question is: In order to enable appropriate action with relation to urban regionalism, is it enough simply to rely upon the plenary power of the legislature? As all of us know—lawyers and non-lawyers alike—the theory of our national union involves the concept that the legislative powers of the state legislatures are plenary. They are full and complete, except as they may be limited by the federal constitution or state constitution or may be restricted by limitations implicit in the federal system.

Put a little differently, the question is: Why would it not be enough simply to rely upon that one little clause in the first section of the legislative article of the state constitution which vests the legislative power of the state in the legislature? (Subject, of course, to whatever provision is made for initiative and referendum.)

Problems of regionalism are so difficult and so complex that there has been a disposition on the part of other states, which have engaged in constitutional revision recently, and the authors of the Model State Constitution¹⁹ to include a broad provision authorizing intergovernmental cooperation, not only with other local units in the immediate area but also with the state, with units in another state, and with the national government. I am not sure of all the implications of provisions of this sort, but the justification for their inclusion is that the need for intergovernmental cooperation is so great that it is best to go ahead and be explicit on the subject. I do not quarrel with this approach although, in general, I believe in a simple pattern of operation under the very broad plenary authority of the legislature.

The existing Ohio constitutional provision for county home rule recognizes that problems overreach municipalities and townships and that countywide jurisdiction may be desirable.²⁰ It does not, however, permit county assumption of jurisdiction over township and municipal affairs without clearing the incredibly high hurdle of the well-known four-way vote in the governmental units in the county. As a consequence, the achievement of county home rule in Ohio is almost out of the question. I must say that I have no fresh formula to promote, but I do hold myself free to

¹⁹ NATIONAL MUNICIPAL LEAGUE, MODEL STATE CONSTITUTION, Art. XI, (6th ed. 1963).

²⁰ OHIO CONST. art. X, §§ 3, 4.

say that the political obstacles to county jurisdiction and perspective should be greatly reduced. I leave it to the wisdom of the constitutional revision commission to come forward with a method of doing it.

Of course, county lines do not necessarily define an urban region and, thus, a county approach may not fit the needs in this or that region. There should be the flexibility to permit recognition of a regional configuration, which does not fit necessarily into a county pattern but might overlap several counties. So, I suggest that a constitutional authorization of inter-governmental cooperation be on a very flexible basis.

In the recent revision of the Pennsylvania constitution there is a grant of such authority and, beyond that, the legislature has been authorized to provide for government of areas involving two or more local units, which is a kind of micro-regionalism.²¹ One interesting question about this is: What do you do with home rule in relation to regionalism? It does seem that there is need for a general functional unit of local government upon which to confer home rule power. We have not devised anything like that, apart from the county unit, which comprehends a region. Certainly the county unit is available, although not highly developed in many states. Another possibility would be the creation of an overlay of government of a regional character which had powers and responsibilities relating to matters which were regional in sweep, and with respect to which the regional government would have the appropriate territorial jurisdiction. It would be a little unusual to have the concept of home rule apply to such a unit because, to begin with, it would be a limited kind of government and some fashioning would have to be done. But why might not a unit of that character be given power of home rule quality, that is, full power insofar as its particular functions were concerned? In any event, these are some of the considerations which I am sure will be given very profound and constructive thought in the deliberations of the constitutional revision commission.²²

V. ENVIRONMENT

The environment affects local government directly and it assuredly involves us all. It is true that a good deal of talk about this subject may not be profound, but this is far from saying that the advocates of ecological action at all levels of government have been operating on a foolish basis. The underlying concern is profoundly well grounded. The basic fact is that man is a creature of nature; he is not something apart. His very future depends upon his recognition that he must live as a part of

²¹ PA. CONST. art. 9, § 7.

²² Of course, there is interest in decentralization as well as regionalism, particularly in larger urban units. The recently revised California constitutional provisions expressly authorize a home rule city to provide in its charter for "subgovernment in all or part" of the city, art. 11, § 5.

nature; he is not above it; he is no less a part of it than the robins and the bluejays. If he tries to depart from this in a way that involves, for example, unlimited growth in the sense of resource consumption and of productivity for an increasing population, he will continue, as Jacques Cousteau has said, to make the seas a cesspool and to damage the other major components of our environment to an extent which may be irremediable.

So, I say that all levels of government are, of necessity, involved in environmental problems. The Illinois Constitution of 1970 speaks to the subject.²³ The instrument speaks, as to ecology, from the standpoint both of individual rights and of declared state public policy to provide and maintain a healthful environment. The individual may enforce his right against any party, governmental or private, through legal proceedings subject to reasonable legislative limitation or regulation.

It remains to be seen how this broad commitment works. I have been troubled by the thought in the past that grand phrases in the organic law might so far outmatch the realities of policy effectuation as to raise doubt as to putting them in at all. The Illinois provisions do seem to me, however, to have substantial potential for legislative and judicial implementation. I say this with recognition that they present to a logical mind some very real questions.

VI. PUBLIC EDUCATION

While public education is a major subject unto itself, which bespeaks the fullest independent consideration, traditional decentralization in public school systems brings them within the overview of this local government seminar. I am certain of that.

At the present time the financing of primary and secondary education, with basic reliance upon the local property tax, is under severe strain. Education is absorbing over 50 per centum of ad valorem tax receipts throughout the country. In the most recent year for which I have figures, 1969, the total of local property taxes was about 30 or 31 billion dollars in the country and over half of that went to educational purposes for the local schools.²⁴ This kind of reliance upon the local property tax has created a situation that presents grave difficulty by itself. Even so, on the average, state and federal funds cover more than 40 per centum of the total devoted to schools. At the same time it is to be noted that taxable values in school districts vary widely over a given state, and, unless there is genuine state equalization on an egalitarian basis, the amount spent per pupil will vary widely over the state.

The Supreme Court of California, in the recent case of *Serrano v.*

²³ ILL. CONST. art. XI.

²⁴ State Aid to Local Government 36 (Advisory Comm'r on Intergovernmental Relations, Washington, D.C., April, 1969).

Priest,²⁵ held as a matter of law, that to make the quality of primary and secondary education a function of the wealth in a school district—the court equated wealth with taxable values—denies students and parent taxpayers in poor districts equal protection of the law under the 14th amendment of the Constitution of the United States.

What the court was saying is that we must take the state as the unit for determining equal protection of the law in relation to school financing. Presumably the wealth factor would be supportable if the state were the property taxing unit and there were state equalization of tax assessments. It is interesting to note that the challenge was to discrepancies, variations or discrimination among districts, not individuals, which is the more common way that an equal protection question is raised, for the sound reason that the safeguard is for the individual.

I have little doubt that the question presented in the California case will reach the Supreme Court of the United States in the near future.²⁶ Even if the high court were to reject the constitutional attack, the actualities will still be with us. This suggests reexamination of all the states' policies with respect to public school financing. There is little doubt that there will be major change in the financing of public school systems over the country. Whether school districts may be redefined in larger units so that the tax bases will be roughly equal or whether school financing may become strictly a state burden, and how federal aid may be employed remain to be seen. I predict that the movement will be toward state financing with federal supplementation. The large district device might produce marked geographic irregularity and otherwise be insensitive to considerations other than "wealth."

Anyone who is concerned with state constitutional revision in Ohio or any other state has to take into account this kind of problem and this kind of thinking. *Serrano* may not be the answer. It is obviously simplistic and leaves one with other reservations, but it does give the courts a handle of justiciability and it deals with a very real condition of educational inequality that is national in reach. Certainly, it is conceivable that the courts, as they have done with respect to redistricting and reapportionment, may force the hands of the state legislatures and perhaps the people of the state as to constitutional revision directed toward achieving patterns of school financing, providing educational opportunity in our public schools on a more egalitarian basis.

It is necessary to add, with respect to education, that concern for local autonomy in public school affairs is something that is ubiquitous in this country. As a matter of fact, at one time we had over one hundred

²⁵ 5 Cal. 3d 584, 487 P.2d 1241, 96 Cal. Repr. 601 (1971).

²⁶ Since this paper was prepared, a federal case in which the *Serrano* doctrine was embraced has reached the Supreme Court. *Rodriguez v. San Antonio Independent School District*, 337 F. Supp. 280 (W.D. Tex. 1971, 1972), *prob. juris. noted* 406 U.S. 966 (1972).

thousand school districts, and most schools are operated independently of the cities. About 75 per centum of our school-age children are in schools which are operated by independent school districts. Today the number of school districts is less than a fifth of what it was at the peak. It is under 20,000²⁷ and, of course, this has been forced by a recognition that very small districts are generally not viable in terms of tax base, size of the community, and size of the student population.

Let me say, insofar as Ohio is concerned, that the state might wish to retain a strong commitment to public education in its constitution, as it does now. There is a constitutional provision which calls upon the legislature to provide a good system of public education.²⁸ Many states have such provisions, and Ohio may wish to continue to do this. Whether it should be disposed to go so far as to make it plain that the total tax burden should be on the state is another matter. The new Illinois constitution seems to go just about that far. It provides that "the state has the primary responsibility for financing the system of public education."²⁹

VII. LOCAL FINANCE

We come, at this juncture, to the general subject of local finance. As to that the commission has an enormous challenge of great difficulty. Societal and governmental changes have outrun the existing dispensation, as you find it under most state constitutions, including that of Ohio.

First, on the revenue side, there is the familiar long-time reliance upon the property tax. The levy in this state is subject to a constitutional ceiling of one per centum of assessed valuation, a ceiling which may be exceeded with electoral approval in the given taxing unit or as provided by home rule charter.³⁰ The question recurs: Is it wise to leave decision-making on taxation needed to keep public education or basic municipal services going at an acceptable level to the voters at the polls? I repeat that I do not think so.

I understand that our Swiss friends, to whom we owe the initiative and referendum, live with arrangements which make taxation and appropriations subject to referendum. That is not a model for American society. If Ohio is to retain the property tax, the policy set by the constitution of setting a low rate limitation which may be exceeded only with elector approval should be abandoned.

I make bold to challenge the whole property tax system. I think it is a very dubious basic tax. Of course, it is a natural thing to use. Our antecedents used it in England, and it is obvious that property is a ready

²⁷ COUNCIL OF STATE GOVERNMENTS, BOOK OF THE STATES 295 (1970-71). The number reported for 1966 was 23,335 and 20,406 for 1968.

²⁸ OHIO CONST. art. VI, § 2.

²⁹ ILL. CONST. art. X, § 1.

³⁰ OHIO CONST. art. XII, § 2.

object of levy. It is there, it cannot be moved out of the state, and it is a recourse for payment. Property serves as a basis for determining how much to draw from the individual. The form of tax is a way of distributing the burden among the citizenry. We all know, however, that the tax is not on property. The tax is on people. The property mechanism is a means, as I have said, of distributing the burden and measuring the tax. But it is fraught with vagaries and unevenness in administration and application. So it does seem to me that it is time to reexamine the property tax *in extenso*.

It should be noted, however, that if the property tax is to be retained, the constitutional limits should be removed and discretion as to the limitation should be left with the legislature. Why preserve a fixed limit in preference to freedom of policy choice? It is to be borne in mind that the tax limitation covers debt service levies on bonds—that is, principal and interest requirements—as well as levies for current expenses. This means, of course, that it operates as an indirect debt limitation on unvoted general obligation bonds.

What I am brought to at this stage is a suggestion that a revised Ohio constitution eschew reliance upon the property tax, except to the extent it may be unalterably committed to cover principal and interest requirements on outstanding general obligation bonds, and leave the legislature and local units in a position to rely on other sources of revenue, notably, graduated income taxes, consumption taxes and charges for services. It is highly important that the legislature be left in a position to take the requisite state action to achieve rational and constructive coordination of national, state, and local revenue systems insofar as the state is concerned. I am aware that a small local unit can hardly be expected to administer a graduated income tax, but that does not defeat us. It is possible for a local unit to levy an income tax or sales tax as a supplement to a corresponding state tax. For example, the rate of the local income tax might be a fraction of that for the state. Thus, the supplement could be collected by the state in a single administration. What was collected in the way of local revenue would be returned to the levying unit.

I turn to a different aspect of taxation. We find that forces committed to motor vehicles in one way or another have been influential enough to obtain constitutional dedication of motor vehicle and gasoline tax revenues to highway purposes in Ohio³¹ and a number of other states. Now, of course, we all like to have automobiles. We depend upon them. But it does seem to me that our commitment to them has had an incredibly powerful and pervasive influence upon the entire society, and upon urban communities and regions in particular, and not always in a wholesome sense.

³¹ OHIO CONST. art. XII, § 5a.

The tax dedication just mentioned is a painful expression of that commitment. It is unsound, in the first place, to make a constitutional dedication of revenues to the exclusion of the exercise of legislative discretion in the use of public funds as unfolding developments and societal needs indicate. In other words, the level at which decisions as to how tax money shall be spent should not be that of the constitution. The money should flow into the general fund and the legislature should be the responsible body to determine how the money shall be spent for authorized public purposes, or so it seems to me. The instant dedication is particularly bad because it nurtures a great distortion in the social circulatory system, which is increasingly hazardous to the social organism.

The social circulatory system consists not simply of highways; there are all sorts of components, which include, for example, mass transportation, various termini, and facilities for walking. I think it is a proper conception to speak of the whole complex of these various components as a circulatory system for the entire social organism. Streets and highways are but one important element.

The effect of the revenue dedication is to influence the circulatory system in such a way as to mould the very character and shape of the organism. You need only look at suburban sprawl to see its handiwork. I would say that, to the extent that such moneys are dedicated and pledged through outstanding bonds, the state, of course, should honor its commitment.³² But beyond that I would urge that the constitutional commitment of these funds to highway purposes is not sound and should be abandoned.

As I come to the topic of local borrowing, I make a fresh assault on the property tax. Traditionally, general obligation bonds of local units have been supported by a commitment to the levying and collecting of property taxes from year to year to cover debt services. The Ohio constitution exacts that there be taxes provided from year to year, and I interpret this to mean property taxes, so that we have a commitment in the constitution on this. The time has come to break the shackles of the property tax system. Just as the corporate mortgage, which used to be regarded as the necessary security behind corporate bonds, has been largely outmoded by economic realities, the security behind municipal bonds should be seen, I think, to be the general strength, stability and responsible management of the borrowing community. So it is, of course, with the formal obligations of the United States; the commitment is of the general faith and credit of the borrower without reference to any particular tax source of payment. So, for the future, issuance of municipal obliga-

³² With respect to contract clause implications see *Von Hoffman v. Quincy*, 71 U.S. (4 Wall.) 535 (1866).

tions comparable to corporate debentures might well be the order of the day.

The home rule amendment of 1912 expressly authorized municipalities to issue mortgage revenue bonds to finance utility plants and systems. As you all know, revenue bonds are bonds issued to finance facilities calculated to produce enough revenue to cover principal and interest as well as to operate the facilities.

The Ohio scheme was to have a mortgage in addition. That may have been a sound conception back in 1912, but I wonder whether the mortgage feature is significant. The basic source of payment is revenue, which, in turn, depends upon the soundness of the enterprise. Is foreclosure of a mortgage upon a municipal water system with an attendant franchise for private operation a consummation even to be contemplated, let alone devoutly to be wished? The point, in short, is that simple revenue bonds are the desirable form. It does not take express constitutional authorization to provide for such financing. The power exists now in Ohio under the general home rule grant.³³

In conclusion I like to think that for constitutional revision purposes there runs through what I have said a consistent strain of thought, even though there are many topics involved. The keynote is flexibility, which, as I see it, bespeaks constitutional change directed to the strengthening of basic state and local governmental institutions and processes with stress all the while upon responsible action rather than upon the hedging of authority.

³³ State *ex rel.* Gordon v. Rhodes, 156 Ohio St. 81, 100 N.E.2d 225 (1951).